

REMARKS

Examiner Cooley is thanked for the courtesy extended during the Office Interview on March 25, 2010.

The Interview Summary is believed to accurately reflect what was discussed during the Interview.

Reconsideration of the objection to the Drawings is hereby requested. A new set of Replacement Sheets are submitted herewith. Therefore, reconsideration of this objection is respectfully requested.

Reconsideration of the rejection of Claims 1, 2, 4, 14, 15 and 18-19 under 35 U.S.C. §102(b) as being anticipated by Dahlstedt (U.S. Patent No. 2,628,023), the rejection of Claims 3 and 21 under 35 U.S.C. §103(a) as being unpatentable over Dahlstedt '023 in view of Kjellgren (U.S. Patent No. 3,656,685), the rejection of Claims 5-6 under 35 U.S.C. §103(a) as being unpatentable over Dahlstedt '023 in view of Zettier (U.S. Patent No. 6,468,574), the rejection of Claims 7-8 under 35 U.S.C. §103(a) as being unpatentable over Dahlstedt '023 in view of GB 991500, the rejection of Claims 9-13 and 17 under 35 U.S.C. §103(a) as being unpatentable over Dahlstedt '023 in view of Gunnewig (U.S. Patent No. 4,755,165), and the rejection of Claim 20 under 35 U.S.C. §103(a) as being unpatentable over Dahlstedt '023 in view of Tenthoff (U.S. Patent No. 4,689,157), is hereby requested.

Claim 1 has been amended and now recites:

1. (Currently Amended) A method of preventing blockages of flow paths of a separator, the separator being set to achieve a desired fat content during processing of a fat-containing product such as milk, the method steps comprising:

determining a concentration of the fat content of an outflowing product phase from the separator to detect an imminent clogging; and

shifting a separation zone in a separator drum of the separator for a defined minimum time period by changing operating parameters when a defined fat content limit value, which is greater than the desired fat content, is one of reached and exceeded to prevent blockages of flow paths of the separator; and

after the defined minimum time period is reached, the separator is returned to the desired fat content setting.

Applicants submit that none of the applied prior art references, individually or in combination, discloses each and every method step of amended independent Claim 1. More particularly, Claim 1 specifies that the separator is set to achieve a desired fat content and a determination is made of the fat content of the outflowing product to detect an imminent clogging. The separation zone in the separation is shifted for a defined period of time when a defined fat content limit value, which is greater than the desired fat content, is reached or exceeded to prevent blockages of the flow paths of the separator. After the defined minimum period of time is reached, the separator is returned to the desired fat content setting.

Applicants further submit that the applied prior reference Dahlstedt '023 discloses only controlling to a certain fat content. Neither Dahlstedt '023 nor the other applied references disclose adjusting the fat content to prevent clogging or shifting a separation zone for a defined minimum amount of time and then returning the separator to the desired fat content setting. Moreover, since the Examiner mentioned "inherency" in the Interview Summary and may assert that the structure and/or operation of devices disclosed in the applied prior art may be inherently capable of selected method steps of Claim 1, Applicants assert that no disclosure of anti-clogging is evident or implied in the applied prior art references and none of the applied prior art references discloses or implies a shifting of the separation zone for a defined minimum period of time to prevent clogging and then returning the separator to the desired fat content setting.

As stated in the MPEP at pages 2100-47-48:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient'." In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (emphasis added).... "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the

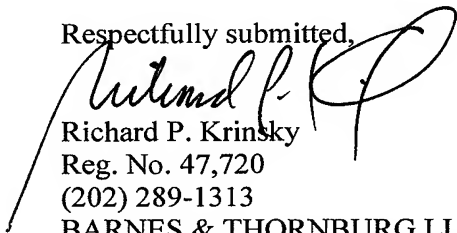
allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

Thus, Applicants assert that just because the structures of one or more of the applied prior art references discloses a shifting the separator zone and discloses adjusting the fat content to achieve a desired fat content, there is no disclosure about preventing clogging or shifting the separation zone for a minimum defined period of time and then shifting it back. Applicants submit that such lack of disclosure means that the method steps of Claim 1 would not be inherent or inherently chosen by one skilled in the art to prevent the clogging of a separator, absent Applicants’ disclosure. Applicants further assert that the Examiner has not established the reasonableness of attributing such an alleged inherent capability to the devices of the applied prior art, of which none allude to or disclose either the prevention of clogging or shifting the separation for a minimum period of time to prevent clogging and then shifting it back to the desired fat content level. Applicants submit that simply alluding to such a possibility is not sufficient to establish inherency. Therefore, reconsideration of this rejection is respectfully requested.

In view of the above, Claims 1-21 the Application are considered to be in condition for allowance and such is hereby requested.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg LLP, Deposit Account No. 02-1010 (677/44950).

Respectfully submitted,



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Enclosure(s): Amendments to and Listing of the Claims  
Replacement Sheets (Figures 1 and 2)

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